

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. Tomatis is a specialized autism treatment program centered in New Jersey. Prior to March 2006, the petitioner was under an IEP from her school district in Barre, Vermont.

The IEP called for implementing the Tomatis program with daily home and community based instruction in Vermont with periodic assessments and monitoring by the program clinicians in New Jersey. The petitioner's mother provides an integral part of the petitioner's treatment program.

3. For about two years prior to March 2006 the program included a week-long trip by the petitioner and her mother to the Tomatis clinic in New Jersey every three months. Under the petitioner's IEP, Medicaid paid for the petitioner's and her mother's transportation and lodging costs when they traveled to New Jersey. There does not appear to have been any question or issue regarding Medicaid coverage for these trips prior to March 2006.

4. In March 2006 it appears that the school district discontinued its support for the Tomatis program. As a result, the petitioner's mother elected to home school her continuing to use the Tomatis program, which she has done since March.

5. Unbeknownst to the petitioner's mother, when the petitioner's IEP was discontinued, the school district agreed to reimburse the Department for its past coverage under Medicaid for the family's periodic transportation and lodging expenses in New Jersey. Neither the school district nor the

Department notified the petitioner or her mother of this action.

6. In 2006 the petitioner was scheduled for her next periodic visit to Tomatis in New Jersey. On May 1, 2006, the petitioner's primary physician in Vermont filed a form request under Medicaid for the costs of transportation to that treatment from May 11 through 19, 2006. On the form the doctor checked that the treatment was "medically necessary", that this was "the closest facility that can provide the treatment", that "overnight lodging (was) necessary", and that the petitioner's mother should accompany her.

7. The Department granted coverage for the treatment itself, but told the petitioner's mother after she had applied for coverage that it would not cover her transportation and lodging expenses because it considered Tomatis to be "experimental", and that treatment for autism can be obtained in Vermont.

8. Despite being informed of the Department's decision, the petitioner's mother kept the appointment in New Jersey and shortly thereafter filed this appeal for reimbursement.

9. Regardless of the merits of its decision, the Department concedes that it did not notify the petitioner of any decision regarding Tomatis until a few days prior to the

New Jersey visit that was to begin on May 11, 2006. The Department also does not dispute that there was nothing about the petitioner's treatment in New Jersey in May 2006 that was essentially any different from the several treatments the petitioner had received there every three months for the past two years under her IEP. The Department also does dispute that it had covered all of the petitioner's and her mother's transportation and lodging costs for those prior visits under Medicaid.

ORDER

The Department's decision is reversed, and the Department shall reimburse the petitioner her transportation and lodging expenses for Tomatis in May 2006.

REASONS

Medicaid regulations include the following provisions regarding notice at W.A.M. § M141:

Each Medicaid recipient must be given written notice of the decision on his or her application or review of eligibility. . . .

All notice letters must contain:

A statement of what action the Department intends to take;

When it intends to take the action;

The reasons for the intended action;

The policy citation that supports the action;

An explanation of the individual's right to appeal the decision. . .

An explanation of the circumstances under which Medicaid is continued if a hearing is requested.

When an eligibility review decision will end or reduce the amount of Medicaid coverage an individual has been receiving, the notice of decision must be mailed at least ten (10) days before the closure or change will take effect. . . .

The regulations also provide:

M143 Continued Benefits During Appeal

When a Medicaid recipient appeals a decision to end or reduce Medicaid coverage, he or she has the right, under certain conditions, to have benefits continue without change until the appeal is decided. . . .

In this case, the Department admits that it determined in March 2006, both prospectively and retroactively, that it would not cover the petitioner's transportation and lodging costs for Tomatis in New Jersey. It is clear that it knew at that time that it had covered these costs every three months for at least the past two years. Nonetheless, the Department admits that it did not communicate this decision to the petitioner until sometime after May 1, 2006, when her doctor filed the request for the upcoming visit on May 11.

Under these circumstances, the Department was clearly required under the above regulations to provide timely notice of its decision to the petitioner prior to its March 2006 decision and to continue the petitioner's benefits until any appeal of that decision was decided. Regardless of the ultimate merits of the Department's decision in this matter, its failure to abide by the above notice and appeal provisions in the regulations requires it to cover the petitioner's transportation and lodging expenses for Tomatis in May 2006.¹

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¹ At a final status conference in this matter held on September 15, 2006 the petitioner's mother informed the Board and the Department that she believes Tomatis recently went out of business and that she no longer will request transportation and lodging expenses there. Thus, the issues surrounding the merits of the Department's decision appear to be moot.